

Remarks

The Office Action mailed August 10, 2006 has been carefully considered. After such consideration, independent Claims 9 and 29 have been amended to further clarify the present inventions and to correct minor technicalities. As such, Claims 9-28; and 29-32 and 35-54 remain in the case with none of the claims being allowed.

The Patent Office rejected claims 9-14, 17-30, 35-40 and 43-54 as obvious over Mosch in view of Diginosa. Claims 15, 16, 41 and 42 were rejected as unpatentable over Mosch and Diginosa, and further in view of Murphy. Claims 31 and 32 were rejected as unpatentable over Mosch in view of Diginosa, and further in view of Repass. Independent Claims 9 and 29 have been amended to overcome these claim rejections. Reconsideration and allowance is respectfully requested in view of the following arguments.

Independent Claim 9 now describes a window latch including: a bushing adapted for use with a pivot fastener; and a detent including: a protrusion on one of a housing and a cam latch; and a receiving groove on the other of the housing and the cam latch. Furthermore, independent Claim 9 also now recites that said perimeter wall having an opening for said cam latch and said pair of rigid interior support walls extend downward to engage the surface of the window sash to provide support for said housing.

Independent Claim 29 now describes a locking window including: a bushing between a cam latch and a housing, and a detent including: a protrusion on one of a housing and a cam latch and a receiving groove on the other of the housing and the cam latch. Exemplary embodiments of the bushing 92 and detent including a protrusion 60 are shown in Figures 6a, 6b and 6c of the applicant's application. An exemplary receiving groove 68 is shown in Figures 4b and 5b. Furthermore, independent Claim 29 also now recites that said perimeter wall having an opening for said cam latch and said pair of rigid interior support walls extend downward to engage the surface of the window sash to provide support for said housing.

As stated by the Examiner, Mosch fails to disclose supporting walls that engage the surface of the window sash. However, the Examiner looks to Diginosa for a teaching that it would be well known in the art to have supporting walls that extend from one perimeter wall to another perimeter wall and that engage a surface of a window sash so as to impart strength to the

housing. In the Examiner's opinion, it would have been obvious to incorporate the supporting walls of Diginosa into the window lock of Mosch.

As the Examiner knows, it is the burden of the Patent Examiner to establish a prima facie case of obviousness when rejecting claims under 35 USC 103. In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). In this case, the Patent Office has failed in several respects to meet this burden.

There Must Be a Basis in the Art for Combining or Modifying References

It has been repeatedly held by the Court of Appeals for the Federal Circuit that absent some teaching, suggestion, or incentive supporting a combination of references, obviousness cannot be established by combining the teachings of the prior art. ACS Hospital Systems, Inc. v. Montefiori Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 939 (Fed.Cir. 1984). This has been interpreted to mean that there must be a reasonable intrinsic or extrinsic justification for the proposed combination of references in order to properly reject the claims of an invention. The examiner must propose some logical reason apparent from the evidence of record that justifies his combination or modification of references. In re Regel, 188 USPQ 132 (CCPA 1975). Therefore, it is important in the instant situation to examine whether or not there exists a reasonable intrinsic or extrinsic justification for the proposed combination of references.

Neither reference appears to consider the need for additional strength and support. Mosch appears to be a conventional steel or cast metal sash lock. Such locks are inherently strong and rigid. Diginosa is a slide lock and, by the nature of this design, very little force is transmitted to the housing. Accordingly, neither of these references appears to consider any need for reinforcing the housing of a sash lock.

Thus, it is submitted that the Examiner has failed to justify making any modification to Mosch at all. Certainly, if such a modification were contemplated, one would not look to a slide lock that is for the purpose of eliminating a Mosch-type slide lock (see e.g. '510 at col. 1, lines 44-51). When the prior art itself provides no apparent reason for one of ordinary skill in the art to make a modification or combination of references, an argument properly exists that the claimed subject matter would not have been obvious.

References are Not Properly Combinable or Modifiable if Their Intended Function is Destroyed

Where a combination of references require that a secondary reference be used to modify a primary reference and where the modification destroys the purpose or function of the primary reference, a person of ordinary skill in the art would not normally tend to make modification. Therefore, both the CCPA and the Federal Circuit have consistently held that where an obviousness-type rejection is based upon a combination of references, in which the modification of the primary reference by the secondary reference would destroy the intent, purpose or function of the invention disclosed in the primary reference, such a proposed modification is improper. In re Gordon, 733 F. 2d 900, 221 USPQ 1125 (Fed.Cir. 1984).

The Examiner's attention is again turned to the Diginosa reference. As can be seen in, for example, Figures 16 and 17, the purpose of the interior walls is to provide a detent surface for positioning the sliding lock. While it is possible that some strength could be added by these walls, it would be purely coincidental and unnecessary with a slide lock that does not require a strong housing.

Prior Art Does Not Teach Source of The Problem

Even though the solution to a problem, once known, may have a simple answer, the recognition of the problem itself or of the source of the problem is not necessarily obvious. Eibel Process Co. v. Minnesota and Ontario Paper Co., 261 U.S. 45 (1923). This early Supreme Court decision has established the long-standing rule that the discovery of a source of a problem alone may result in the unpatentable invention despite the fact that solution was relatively simple. In the present case, the problem itself is how to add strength to a housing of sash lock while maintaining a conventional appearance such a design allows the use of plastic and other more flexible materials than previously considered (see e.g. specification at page 1, lines 18-31 and page 2, lines 1-9). The present invention solves this problem in a way that is not shown nor suggested by the prior art.

Conclusion

In summary, a person of ordinary skill having the Mosch sash lock in hand would be satisfied that a solution to the strength of the housing has been solved by the inherent strength of

the materials used. He would not be aware that further problems existed when it was attempted to substitute plastic for metal. Further, were a person of ordinary skill in the art aware that a problem existed, he would not be led to search through such art as Diginosa which is directed to the slide lock specifically intended to eliminate the use of a sash lock such as the Mosch lock.

Accordingly, it is submitted that, by this amendment, the case is in condition for allowance and such action is respectfully requested. However, if any issue remains unresolved, a telephone interview to Applicant's attorney to expedite allowance and issue would be welcomed.

Respectfully submitted,



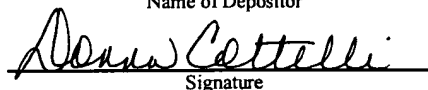
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